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DICKE, BILLIG & CZAJA, P.L.L.C. FIFTH STREET TOWERS 100 SOUTH FIFTH STREET, SUITE 2250 MINNEAPOLIS, MN 55402			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/840,332

Applicant(s)

HAMMANN, JERALD A.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060608</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/08/2006 has been entered.
2. The following is a non-final office action in response to communications received 06/08/06. Claim 31-40 have been amended and are pending in this application.

### *Response to Arguments*

3. Applicant's remarks concerning the provisional double patenting rejection have fully considered, but they are not persuasive. Examiner points out that this is a **provisional** rejection because the conflicting claims have not in fact been patented. The rejection is to put the applicant on notice that if one of co-pending applications 09/999,378 and 09/840,332 (current application) issues, the other co-pending application would stand subject to a double patenting rejection, as the claims are currently recited. Double patenting rejections are based on conflicting claims between issued patent claims and pending claims, and therefore issue dates and not filing dates determine precedence in a double patenting rejection. Since Examiner does not know which application, if any, will be issued first, the provisional double patenting rejection is proper and will be asserted in both applications.

Therefore, the provisional double patenting rejection has been reasserted below.

4. Applicant's arguments with respect to the rejections based on Campbell et al. (U.S. 5,918,209) have been considered but they are not persuasive. In the remarks, Applicant argues that (1) Campbell et al. is directed to perishable resources and not human factor resources and thus does not teach or suggest that the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time *and* that the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is related to at least one human factor resource and is not a static ability. Applicant has also requested a reference to support (2) Examiner's official notice taken that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user.

In response to argument (1), Examiner respectfully disagrees. First, Examiner is not clear, from the claims, as to functional distinction between a perishable resource and a human factor resource. First, most individual resources are in some way perishable, having shelf lives, usable lives, etc. Second, the claims contain no recitation of the term perishable and only recite the term "human-factor resources industry" in the preamble and in the limitation "that the measure of an ability to produce and/or make available additional quantities of the at least one composite resource [...] is related to at least one human factor resource". The recitation in the

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preamble serves as an intended field of use, since a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The second occurrence of the limitation “human factor resource” also does not have much functional significance, as the recitation states that the measure is related to (i.e. associated with) at least one human factor resource without clearly reciting how functionally the resource is related to human factor resources. Therefore, this limitation merely requires that the composite resource is associated somehow with at least one human factor resource.

Campbell et al. does disclose the limitations argues in argument (1) above. Campbell et al. does teach and suggest that the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first time plus a measure of an ability to make available additional quantities over a time period beginning at the first time and ending at a second time in at least column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources, and column 1, lines 50-65, column 7, lines 45-65, wherein capacity is a measure of on-hand availability for flight legs at specific times, plus a measure of additional quantities (i.e. “overbooking factor”) that makes additional capacity available by the second time (the time of the flight). Thus, the measure of an ability to make available additional quantities is related to at least one human factor resource and is not a static ability, since Campbell et al. teaches a measure of on-hand availability for flight legs at specific times, plus a measure of additional quantities (i.e. “overbooking factor”) that

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makes additional capacity available. The overbooking factor is used to make available additional capacity (i.e. the plane has a physical capacity and through calculation extra capacity is calculated and sold), and thus is determined by human calculation. Further, this capacity is not static, as discussed in column 7, lines 45-65, because the supply of seats remaining is calculated at different times based on the physical capacity of the plane minus the seats already booked plus an overbooking factor.

Applicant makes numerous references to the specification in the arguments presented. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to argument (2), Examiner provides at least Walker et al. (U.S. 6,298,331), which discloses this concept. Walker et al. discloses a communication that takes place prior to the assignment of other concurrently consumed and/or utilized composite resources to the at least one potential user in column 9, lines 30-50, column 11, lines 55-column 12, line 25 and 40-60, and column 13, lines 5-15. The communication takes place prior to offering another composite good, as well as prior to actually transferring the other composite good to the user. The communication takes place at the time of sale, before any goods are actually assigned to and paid for by the user. Examiner maintains that communicating with purchasers prior to sale and assignment of items in order to influence purchasing decisions is well-known in the marketing industry.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 31, 32, 33, 34, 35, and 36-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the timing of the communications and the intention of the communications. With regards to claim 31 of the current application, claim 31 recites "accepting, via computer, transaction parameter values" which is not recited in claim 1 of the copending application. Both claims recite in the preamble that the method is a computer-based method. Therefore, this "via computer" limitation of claim 31 is merely reciting aspects of the preamble in the body of the claim. Therefore, modifying the current application to include that the transaction parameters are accepted via a computer is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Further, claim 31 of the current application recites "wherein the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available", whereas claim 1 of application 09/999,378 recites "wherein the service time is a present or future

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time when the service is available” and thus does not include the language “a date and/or time measure indicating”. A date or a time is a measure or indication of quantity of time. For example, both May 5 and 9 AM-5 PM indicate an amount of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include that a date of time is a measure indicating a present or future first date and/or time in order to more accurately account for time intervals using known and standard units.

Finally, Claim 31 of the current application recites “wherein the measure of an ability to produce and/or make available additional quantities [...] is related to at least one human factor resource and is not a static ability” which is not recited in claim 1 of the copending application. First, both claims recite “an ability to make available additional quantities”, and thus the fact that the measure is not static is obvious in light of this language because the “ability to make available additional quantities” is a dynamic quality. Therefore, the modification of the current application to include that the ability to make available additional quantities is not static is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Second, the limitation of the current application “wherein the measure of an ability to produce and/or make available additional quantities [...] is related to at least one human factor resource” does not include any functional significance as to how or why the composite resource is related to at least one human factor resource. It is well known in the art that many composite resources are associated with a human factor, such as resources being related to human scheduling, calculation, and ability to manufacture, to name a few examples. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an association between the composite resource and a human factor resource in order to more accurately



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measure the ability to make available the composite resource by considering all factors associated with this ability, such as human error.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. (U.S. 5,918,209).

As per claim 31, Campbell et al. teaches a computer-based method for yield management in human factor resource industries, comprising:

accepting, via a computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines

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42-46, which discuss composite resources. See column 5, lines 10-25 and line 50-column 6, line 10, column 8, lines line 10-30, column 19, lines 5-25, wherein the composite resource has locations (such as origins and destinations) and dates when the resource occurs. See column 6, lines 40-60, and column 7, lines 15-26, wherein transaction parameter values are accepted via the computer);

communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the composite resource, the communication attempting to modify at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, wherein when the capacity exceeds demand for the at least one composite resources, the communication attempts to increase the demand for and/or decrease the capacity of the at least one composite resource (See column 2, lines 55-66, column 6, lines 40-55, column 7, lines 15-26 and 43-62, column 9, lines 25-35, column 12, lines 1-10, and column 19, lines 5-30, wherein the values are communicated and attempts to modify the capacity available by decreasing the capacity);

wherein the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available (See column 2, lines 55-65, column 5, lines 10-25, column 8, lines line 10-25 and 45-55, column 19, lines 5-25, wherein the composite resource has a future time when it is available);

wherein the communication occurs prior to any first assignment (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 10-25 and 42-46, column 8, lines line 10-25, column 19, lines 5-25, wherein the communication occurs prior to assignment);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 1, lines 50-65, column 7, lines 45-65, wherein capacity is a measure of on-hand availability for flight legs at specific times, plus a measure of additional quantities (i.e. "overbooking factor" that makes additional capacity available));

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is related to at least one human factor resource and is not a static ability (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 1, lines 50-65, column 7, lines 45-65, wherein capacity is a measure of on-hand availability for flight legs at specific times, plus a measure of additional quantities (i.e. "overbooking factor" that makes additional capacity available). The overbooking factor is used to make available additional capacity (i.e. the plane has a physical capacity and through calculation extra capacity is calculated and sold), and thus is determined by human calculation. Further, this capacity is not static, as discussed in column 7, lines 45-65, because the supply of seats remaining is calculated at different times based on the physical capacity of the plane minus the seats already booked plus an overbooking factor); and

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 7, lines 45-65, column 8, lines 45-60, column 9, line 40-column 10, line 10, wherein demand is a measure of consumption/use of the composite resources plus the expectation of additional use before the departure date/time).

However, Campbell et al. does not expressly disclose that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user.

Campbell et al. discloses communication values between a user and the system before the composite resource is granted to the user. Communicating with purchasers prior to sale and assignment of items in order to influence purchasing decisions is well-known in the marketing industry. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to communicate with the user prior to any assignment of other composite resources in order to more efficiently determine and implement the most effective set and assignment of composite resources by communicating with users prior to the assignment of resources, thus swaying their choices to meet the optimal plan determined. See column 2, lines 35-45, and column 11, lines 20-35, which disclose the importance of balancing supply and demand amongst the consumers of the composite resources.

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Claim 32 is substantially similar to claim 31 and is therefore rejected using the same art and rationale set forth above.

Claim 33 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Campbell et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (See figure 2A, column 6, lines 15-42, column 7, lines 25-35 and 43-60, column 8, lines 40-65, column 9, lines 60-67, wherein the data stored in the system is accessed by the program and processed).

Claim 34 is rejected using the same art and rationale set forth above in the rejection of claim 31. Campbell et al. further teaches storing the data related to the individual resources and the associated composite resources (See column 2, line 55-column 3, line 20, column 8, line 40-column 9, line 15, wherein data is stored that associates individual resources (legs/intermediaries) with the composite resource (flight path departure/origin, intermediaries, destination));

constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources (See column 2, line 55-column 3, line 20, column 8, line 40-column 9, line 15, wherein internal data structures are built).

Claim 35 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Campbell et al. further teaches receiving a responding communication from at least one user binding the at least one composite resource

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with specified transaction parameter values (See column 6, lines 42-60, column 7, lines 15-26 and 45-65, column 8, lines 10-39, wherein the seat is booked via a reservation system).

As per claims 36-38 and 40, Campbell et al. teaches wherein, when demand exceeds capacity for the at least one composite resource, the communication attempts to decrease the demand for the at least one composite resource and/or increase the capacity of the at least one composite resource (See figures 7B and 11A, column 12, lines 5-15, column 14, lines 15-30 and 58-67, column 17, lines 60-65, wherein prices are determined and communicated in order to balance supply/capacity and demand. In situations where there is more demand than supply/capacity, the demand must be dispersed and decreased).

As per claim 39, Campbell et al. discloses indicating, when the demand for a composite resource exceeds the capacity of the composite resource, that the demand for the composite resource should be decreased and/or the capacity of the composite resource should be increased (See figures 7B and 11A, column 12, lines 5-15, column 14, lines 15-30 and 58-67, column 17, lines 60-65, wherein prices are determined and communicated in order to balance supply/capacity and demand. In situations where there is more demand than supply/capacity, the demand must be dispersed and decreased).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*lwa*  
bvd

August 7, 2006

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